




George R. Hodges
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NORTH CAROLINA
(Charlotte Division)

In re:)	
)	
Joshua and Andrea Farmer)	Chapter 11
)	Case No. 10-40270
Debtors.)	
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In re:)	
)	
Raymond and Diane Farmer)	Chapter 11
)	Case No. 10-40269
Debtors.)	
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**ORDER GRANTING THE EMERGENCY MOTION OF THE DEBTORS:
(I) TO COMPEL TAXING AUTHORITIES TO ACCEPT PAYMENT OF
POST-PETITION AD VALOREM PROPERTY TAXES, OR ALTERNATIVELY
(II) TO USE ACCUMULATED CASH COLLATERAL TO PAY 2010 AD VALOREM
PROPERTY TAXES**

THIS MATTER came before the Court for hearing on January 5, 2011, on the Debtors' motion: i) to compel the Taxing Authorities (defined below) to accept payment of post-petition *ad valorem* property taxes, or alternatively ii) to authorize the Debtors to use accumulated cash collateral to pay the 2010 *ad valorem* property taxes (the "Motion"). Based upon the record before the Court and the arguments presented by counsel for the Debtors, the Court finds that the Motion should be GRANTED.

Accordingly, the Court makes the following Findings of Fact and Conclusions of Law:

1. This is a core proceeding pursuant to 28 U.S.C. § 157(b), and the Court has the authority to enter this Order under 11 U.S.C. §§ 105(a), 361, 363, 503(b) and 506 of the Bankruptcy Code and Bankruptcy Rule 4001.

2. On April 5, 2010 (the "Petition Date"), Debtors filed two voluntary joint petitions in this Court seeking relief under chapter 11 of the Bankruptcy Code.

3. On May 10, 2010, the Court entered an Order administratively consolidating the Debtors' individual chapter 11 cases. No trustee, examiner, or official committee of unsecured creditors has been appointed in these chapter 11 cases.

4. Joshua Farmer and Raymond Farmer (the "Farmers") are the owners of multiple apartment complexes and commercial properties located in North Carolina and South Carolina (each a "Property," and collectively the "Properties"). The Properties are identified on **Exhibit A** to this Order.

5. During the first two weeks of January 2011, the 2010 *ad valorem* real property taxes related to the Properties are last payable without penalty to the taxing authorities identified on **Exhibit A** to this Order (the "Taxing Authorities").

6. The property taxes related to the North Carolina Properties are last payable without penalty on or before January 5, 2011. The property taxes related to the South Carolina Properties are last payable without penalty on or before January 15, 2011.

7. Pursuant to this Court's cash collateral order as subsequently amended, the Debtors have escrowed funds to satisfy the post-petition property taxes related to the Properties in an account maintained by counsel for the Debtors (the "Post-Petition Taxes"). *See Amended Final Order Authorizing the Use of Cash Collateral, Pursuant to Sections 361 and 363 of the Bankruptcy Code*, Decretal ¶ (e) (ECF No. 145) (the "Cash Collateral Order").

8. While the Debtors were not authorized to escrow the pre-petition portions of the 2010 *ad valorem* property taxes related to the Properties (the “Pre-Petition Taxes”), they are capable of paying the full amount of the 2010 property taxes from the tax escrow account and accumulated cash collateral on hand at all of the Properties except Wildewood Apartments, Addison Townhomes and Georgetown Village Apartments.

9. On or about December 30, 2010, the Spartanburg County Tax Collector informed the Debtors that it would not accept a partial payment of the 2010 taxes consisting of the Post-Petition Taxes. The Debtors believe, and the Court agrees, that many of the other Taxing Authorities will not accept only the Post-Petition Taxes from the Debtors and may attempt to charge fees, interest, and penalties on the entire amount of the 2010 taxes related to the Properties unless the full year’s taxes are timely paid.

10. The Post-Petition Taxes are administrative expense claims against the Debtors’ bankruptcy estates under 11 U.S.C. § 503(b)(1)(B).

11. Section 503(b)(1)(B) does not apply to the Pre-Petition Taxes because they were incurred prior to the Petition Date.

12. Under section 506(b), an oversecured creditor may only recover “...reasonable, fees, costs, or charges provided for under the agreement or State statute under which such claim arose.” 11 U.S.C. § 506(b).

13. For the purposes of this Motion, the Court will treat the Taxing Authorities as oversecured creditors, although the Court reserves the right to determine the validity, priority or extent of any lien asserted by any of the Taxing Authorities and the value of the Properties pursuant to section 506 of the Bankruptcy Code.

14. Entry of this Order is in the best interests of the Debtors, their creditors and other parties in interest in this case.

15. Inland Mortgage Capital Corporation and the Securitization Creditors have expressed their consent to the Debtors' use of cash collateral to make the payments identified in paragraph C below. None of the remaining secured creditors identified on **Exhibit A** have objected to the Debtors' use of cash collateral to make such payments.

Accordingly, it is hereby ORDERED, ADJUDGED and DECREED as follows:

A. The Motion is hereby GRANTED.

B. Authority to Disburse Post-Petition Taxes. The Debtors are hereby authorized to disburse the Post-Petition Taxes, which have been held in an escrow account maintained by counsel for the Debtors pursuant to the Court's Cash Collateral Order.

C. Authority to Use Cash Collateral. In addition to the escrowed Post-Petition Taxes, Debtors are hereby authorized to use cash collateral on hand to pay the full amount of the 2010 *ad valorem* property taxes for the following Properties identified on **Exhibit A**: (i) East Ridge Apartments; (ii) Meadow Green Apartments; (iii) the Two-Mile Office and Warehouse and Edwards Street Land; (iv) Timbercreek Apartments; (v) Magnolia Ridge Apartments; (vi) Creekside Apartments; (vii) Groves Apartments; (viii) Creekside Mini-Storage; (ix) Mayse Road Houses; and (x) the Winchester Drive Houses.

D. Georgetown Village Apartments and Wildewood Apartments. The Spartanburg County Treasurer and/or the Spartanburg County Tax Collector (collectively, "Spartanburg County"), is hereby ordered to accept payment of the Post-Petition Taxes related to the Georgetown Village Apartments and Wildewood Apartments in full satisfaction of its administrative expense claim under 11 U.S.C. § 503(b)(1)(B). Spartanburg County shall be prohibited from charging interest, fees, penalties or other charges allowed under South Carolina law on the full amount of the 2010 *ad valorem* real property taxes related to the Georgetown Village Apartments and Wildewood Apartments. Rather, Spartanburg County may only recover

any such, charges, fees, interest, or penalties related to the Pre-Petition Taxes of those properties to the extent provided for under applicable South Carolina law and the Bankruptcy Code.

E. Addison Townhomes. The Greenville County Tax Collector and/or the Greenville County Treasurer (collectively, "Greenville County"), is hereby ordered to accept payment of the Post-Petition Taxes related to the Addison Townhomes in full satisfaction of its administrative expense claim under 11 U.S.C. § 503(b)(1)(B). Greenville County shall be prohibited from charging interest, fees, penalties or other charges allowed under South Carolina law on the full amount of the 2010 *ad valorem* real property taxes related to the Addison Townhomes. Rather, Greenville County may only recover any such, charges, fees, interest, or penalties related to the Pre-Petition Taxes of Addison Townhomes to the extent provided for under applicable South Carolina law and the Bankruptcy Code.

This Order has been signed electronically. The Judge's signature and Court's seal appear at the top of this Order.	United States Bankruptcy Court
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EXHIBIT A

Property	Lender	Current Owner	Taxing Authority
East Ridge Apartments 300 Regency Road Spartanburg, SC	Palmetto Bank	Joshua Farmer Raymond Farmer	Spartanburg County Treasurer PO Box 5807 Spartanburg, SC 29304
Meadow Green Apartments 1504 Fernwood-Glendale Road Spartanburg, SC	Palmetto Bank	Joshua Farmer Raymond Farmer	Spartanburg County Treasurer PO Box 5807 Spartanburg, SC 29304
Wildewood Apartments 350 Bryant Road Spartanburg, SC	Palmetto Bank	Joshua Farmer Raymond Farmer	Spartanburg County Treasurer PO Box 5807 Spartanburg, SC 29304
Addison Townhomes 104 Watson Road Taylors, SC	Palmetto Bank	Joshua Farmer Raymond Farmer	Greenville County Tax Collector 301 University Rdg # 700 Greenville, SC 29601
Two-Mile Office & Warehouse & Edwards Street Land 174/220 Edwards St. Extension Rutherfordton, NC	Palmetto Bank	Joshua Farmer Raymond Farmer	Rutherford County Tax Collector PO Box 143 Rutherfordton, NC 28139
Timbercreek Apartments 501 Camelot Drive Spartanburg, SC	KeyBank, or its successor or assign	Joshua Farmer Raymond Farmer	Spartanburg County Treasurer PO Box 5807 Spartanburg, SC 29304
Magnolia Ridge Apartments 266 Goldmine Springs Road Gaffney, SC	KeyBank, or its successor or assign	Joshua Farmer Raymond Farmer	Cherokee County Tax Collector PO Box 1267 Gaffney, SC 29342
Creekside Apartments 1230 Overbrook Drive Gaffney, SC	KeyBank, or its successor or assign	Joshua Farmer Raymond Farmer	Cherokee County Tax Collector PO Box 1267 Gaffney, SC 29342
Georgetown Village Apartments 1421 John B. White, Sr. Blvd. Spartanburg, SC	First National Bank of the South	Joshua Farmer Raymond Farmer	Spartanburg County Treasurer PO Box 5807 Spartanburg, SC 29304
Groves Apartments 1402 Groves Boulevard North Augusta, SC	Inland Mortgage Capital Corp.	Joshua Farmer Raymond Farmer	Aiken County Tax Collector PO Box 873 Aiken, SC 29802 City of North Augusta PO Box 6400 North Augusta, SC 29861-6400
Creekside Mini-Storage 1240 Overbrook Drive Gaffney, SC	First South Bank	Joshua Farmer Raymond Farmer	Cherokee County Tax Collector PO Box 1267 Gaffney, SC 29342

Mayse Road Houses 310-391 Mayse Road (except 363) Forest City, NC	First National Bank-Shelby	Joshua Farmer Raymond Farmer	Rutherford County Tax Collector PO Box 143 Rutherfordton, NC 28139
Winchester Drive Houses 108, 119, 122, 131, 141 Winchester Drive Ellenboro, NC	First National Bank-Shelby	Joshua Farmer Raymond Farmer	Rutherford County Tax Collector PO Box 143 Rutherfordton, NC 28139